

# **Exhibit 4**

to

Memorandum of Law in Support of United States'  
Motion to Consolidate Cases for Trial

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY	)	MDL No. 1456
AVERAGE WHOLESAL PRICE	)	Master File No. 01-CV-12257-PBS
LITIGATION	)	Subcategory Case No. 06-CV-11337-PBS
<hr/>	)	
	)	Judge Patti B. Saris
THIS DOCUMENT RELATES TO:	)	
<i>United States of America ex rel. Ven-A-Care of</i>	)	Magistrate Judge Marianne B. Bowler
<i>the Florida Keys, Inc., et al. v. Boehringer</i>	)	
<i>Ingelheim Corporation, et al., Civil Action No.</i>	)	
<i>07-10248-PBS</i>	)	
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**DEFENDANTS ROXANE LABORATORIES, INC., n/k/a BOEHRINGER  
INGELHEIM ROXANE, INC.'S AND ROXANE LABORATORIES, INC.'S  
SUPPLEMENTAL INITIAL DISCLOSURES PURSUANT TO FED. R. CIV. P. RULE 26**

Roxane Laboratories, Inc., n/k/a Boehringer Ingelheim Roxane, Inc. and Roxane Laboratories, Inc. (collectively "Roxane")<sup>1</sup> make the following supplemental initial disclosures pursuant to Rule 26 of the Federal Rules of Civil Procedure and Local Rule 26.2(A):

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<sup>1</sup> These separate corporate entities are providing these joint Disclosures because they are products of a recent corporate reorganization. In April 2005, Roxane Laboratories, Inc., a Delaware corporation, changed its name to Boehringer Ingelheim Roxane, Inc ("BIRI"). BIRI remains a Delaware corporation. BIRI continues to manufacture pharmaceutical products. Also in April 2005, a new corporation, Roxane Laboratories, Inc. ("RLI"), was incorporated in Nevada. As of that time, the new Nevada corporation assumed responsibilities for sales and marketing of multi-source pharmaceutical products sold under the Roxane trade name. Because the focus of this suit is on the sale and marketing of Roxane products, for the purpose of this Response, all responses regarding the time period before April 2005 will be deemed to have been made on behalf of BIRI while all responses regarding the time period after April 2005 will be deemed to have been made on behalf of RLI.

- (A) **The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.**

**RESPONSE:**

Roxane's investigation into the facts and circumstances surrounding this action and other AWP cases is not yet complete. Roxane accordingly bases this Response on the information presently within its possession and reserves the right to supplement or amend this Response as appropriate and to the extent required by the Federal Rules of Civil Procedure. Subject to the foregoing, Roxane herein discloses the following current and former Roxane employees, who may have knowledge of relevant facts and circumstances because of their role in, or familiarity with, the pricing and/or marketing of Roxane's products, the reporting and/or determination of prices and pricing benchmarks, and/or the calculation of AMP:

<b>Name</b>	<b>Address and Telephone Number</b>	<b>Specific Subject(s) of Information</b>
Joe DeCapua	Boehringer Ingelheim Pharmaceuticals, Inc. 900 Ridgebury Road P.O. Box 368 Ridgefield, CT 06877-0368 Ph: (203) 798-9988	Medicaid rebates; the calculation of AMP and Best Price for Roxane products.
Mike Doan	1436 Chadwick Ridge Drive Lawrenceville, GA 30043 Ph: Not Available	Marketing and/or sale of Roxane products to wholesalers and pharmacies; contracting between Roxane and wholesalers; contracting between Roxane and pharmacies.

<b>Name</b>	<b>Address and Telephone Number</b>	<b>Specific Subject(s) of Information</b>
Richard Feldman	14 Island Rock Plymouth, MA 02360 Ph: Not Available	Marketing and/or sale of Roxane products to wholesalers and pharmacies; contracting between Roxane and wholesalers; contracting between Roxane and pharmacies; pricing of Roxane products; communications with pricing compendia.
Dawn Gordon	Boehringer Ingelheim Pharmaceuticals, Inc. 900 Ridgebury Road P.O. Box 368 Ridgefield, CT 06877-0368 Ph: (203) 798-9988	Marketing and/or sale of Roxane products to wholesalers and pharmacies; contracting between Roxane and wholesalers; contracting between Roxane and pharmacies.
Christine Marsh	Boehringer Ingelheim Pharmaceuticals, Inc. 900 Ridgebury Road P.O. Box 368 Ridgefield, CT 06877-0368 Ph: (203) 798-9988	Contract administration for Roxane products.
Lesli Paoletti	Roxane Laboratories, Inc. 300 Northfield Road Bedford, OH 44146 Ph: (800) 562-4797	Pricing and marketing of Roxane products.
John Powers	6054 Hampton Corners North Hilliard, OH 43206 Ph: Not Available	Contract administration for Roxane products.
James Rowenhorst	Boehringer Ingelheim Pharmaceuticals, Inc. 900 Ridgebury Road P.O. Box 368 Ridgefield, CT 06877-0368 Ph: (203) 798-9988	Eligibility of Roxane products for third-party reimbursement.
Steve Snyder	Ben Venue Laboratories, Inc. 300 Northfield Road Bedford, OH 44146 Ph: (800) 562-4797	Marketing and/or sale of Roxane products to wholesalers and pharmacies; contracting between Roxane and wholesalers; contracting between Roxane and pharmacies.

<b>Name</b>	<b>Address and Telephone Number</b>	<b>Specific Subject(s) of Information</b>
Robert Sykora	6340 Sugarloaf Parkway Suite 400 Duluth, Georgia 30097 Ph: Not Available	Marketing and/or sale of Roxane products to wholesalers and pharmacies; contracting between Roxane and wholesalers; contracting between Roxane and pharmacies.
Anthony Tavolaro	Boehringer Ingelheim Pharmaceuticals, Inc. 900 Ridgebury Road P.O. Box 368 Ridgefield, CT 06877-0368 Ph: (203) 798-9988	Marketing and/or sale of Roxane products to wholesalers and pharmacies; contracting between Roxane and wholesalers; contracting between Roxane and pharmacies.
Edward J. Tupa	P.O. Box 1094 Granby, CO 80446 Ph: Not Available	Pricing, marketing, and/or sale of Roxane products.
Tom Via	Boehringer Ingelheim Pharmaceuticals, Inc. 900 Ridgebury Road P.O. Box 368 Ridgefield, CT 06877-0368 Ph: (203) 798-9988	Marketing and/or sale of Roxane products to wholesalers and pharmacies; contracting between Roxane and wholesalers; contracting between Roxane and pharmacies.
Judy Waterer	Roxane Laboratories, Inc. 300 Northfield Road Bedford, OH 44146 Ph: (800) 562-4797	Pricing and marketing of Roxane products.

Roxane does not disclose herein the names of inside or outside counsel whose knowledge of relevant facts and circumstances relate only to their activities in providing legal advice and therefore is protected by the attorney-client privilege. Current and former Roxane employees, including those listed above, should be contacted exclusively through counsel for Roxane:

Helen E. Witt, P.C.  
Anne M. Sidrys, P.C.  
Eric T. Gortner  
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Chicago, IL 60601  
(312) 861-2000 (Telephone)  
(312) 861-2200 (Facsimile)

Roxane further states that current and former employees, representatives, and/or officials of the following entities are likely to have discoverable information in this case: branches, agencies, and departments of the federal government, including, but not limited to the Department of Health and Human Services (“HHS”), the Office of the Inspector General (“OIG”), and the Centers for Medicare and Medicaid Services (“CMS”), f/k/a Health Care Financing Administration (“HCFA”); Ven-A-Care of the Florida Keys, Inc. (“Ven-A-Care”); State health care agencies, including, but not limited to the Medicaid agencies for each of the fifty states; independent pricing compendia publishers, including, but not limited to First Data Bank; and wholesalers for pharmaceutical products, including, but not limited to AmerisourceBergen and McKesson. The identities of many of the individuals referenced above are best known to Plaintiffs. Notwithstanding, Roxane herein discloses the following current and former employees, representatives, and/or officials of the entities referenced above, who are likely to have discoverable information that will support some or all of Roxane’s defenses:

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## **CMS - HCFA**

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**Federal Legislators**

**Sen. Charles Ernest Grassley**

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**Government Counsel**

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**Ven-A-Care**

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Roxane incorporates by reference all additional Plaintiff and third party witnesses identified on pp. 6-77 of Defendant Dey's Second Supplemental Initial Disclosures (attached hereto as Exhibit A), and additionally identifies the following person(s):

**HHS - OIG**

**William Shrigley**  
(Current address unknown)

Roxane further incorporates by reference any additional persons identified in the Rule 26 disclosures of any other party to this action, including those persons identified in any Rule 26 disclosures filed by Defendants Abbott and Dey in both their federal actions and the California State AWP litigation. Roxane's identification of individuals in this Response shall not be construed as an admission by Roxane that any information possessed by such individuals is relevant to or admissible in this litigation. This Response is not a waiver of any objections that Roxane may have.

- (B) A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.**

**RESPONSE:**

Roxane's investigation into the facts and circumstances surrounding this action is not yet complete. Roxane anticipates that it will discover additional documents in the course of its further investigation and via discovery in this case and other AWP cases. Accordingly, Roxane reserves the right to use such additional documents, as well as any other documents listed in the Rule 26 disclosures of the other parties to this action, in connection with these proceedings and at trial. Roxane further reserves the right to supplement or amend this Response as appropriate and to the extent required by the Federal Rules of Civil Procedure. Subject to the foregoing, Roxane herein sets forth a description by category of documents, data compilations, and tangible

things that it has or controls, and of which it is aware at this time, that it may use to support its claims or defenses in this matter:

Document Category	Location(s)
<p>1. Communications between Roxane and independent pricing compendia publishers regarding their practices and procedures and the pricing and/or listing of Azathioprine (NDC 00054408425), Diclofenac Sodium (NDC 00054422125, 00054422225), Furosemide (NDC 00054329446, 00054329450, 00054429725, 00054829725, 00054429731, 00054429925, 00054829925, 00054429931, 00054430125, 00054830125, 00054430129), Hydromorphone (NDC 00054439225, 00054439425), Ipratropium Bromide (NDC 00054840211, 00054840213, 00054840221, 00054840411, 00054840413, 00054840421), Oramorph SR (NDC 00054479025, 00054480519, 00054480525, 00054480527, 00054479225, 00054479325), Roxanol (NDC 00054375144, 00054375150, 00054375158), Roxicodone (NDC 00054465825, 00054466525) and Sodium Polystyrene O/S (NDC 00054380563, 00054881611).<sup>2</sup></p>	<p>Kirkland &amp; Ellis LLP 200 E. Randolph Drive Chicago, IL 60601</p> <p>On information and belief, the respective pricing compendia publishers may also have copies of these documents.</p>

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<sup>2</sup> Roxane reserves the right to limit its production of documents should any of the drugs or NDCs listed above and below be dismissed or otherwise removed from the case.

Document Category	Location(s)
<p>2. Communications between Roxane and the Centers for Medicare &amp; Medicaid Services (“CMS”), agents of CMS, and/or other federal or state agencies, offices, and departments regarding the pricing, pricing benchmarks, rebates, supplemental rebates, and/or reimbursement of Azathioprine (NDC 00054408425), Diclofenac Sodium (NDC 00054422125, 00054422225), Furosemide (NDC 00054329446, 00054329450, 00054429725, 00054829725, 00054429731, 00054429925, 00054829925, 00054429931, 00054430125, 00054830125, 00054430129), Hydromorphone (NDC 00054439225, 00054439425), Ipratropium Bromide (NDC 00054840211, 00054840213, 00054840221, 00054840411, 00054840413, 00054840421), Oramorph SR (NDC 00054479025, 00054480519, 00054480525, 00054480527, 00054479225, 00054479325), Roxanol (NDC 00054375144, 00054375150, 00054375158), Roxicodone (NDC 00054465825, 00054466525) and Sodium Polystyrene O/S (NDC 00054380563, 00054881611).</p>	<p>Kirkland &amp; Ellis LLP 200 E. Randolph Drive Chicago, IL 60601</p> <p>On information and belief, copies of these documents can also be found with the applicable federal agencies, including, but not limited to:</p> <p>Centers for Medicare &amp; Medicaid Services 7111 Security Boulevard Baltimore, MD 21244</p>
<p>3. Communications between Roxane and federal and state purchasers regarding the pricing of or rebates for Azathioprine (NDC 00054408425), Diclofenac Sodium (NDC 00054422125, 00054422225), Furosemide (NDC 00054329446, 00054329450, 00054429725, 00054829725, 00054429731, 00054429925, 00054829925, 00054429931, 00054430125, 00054830125, 00054430129), Hydromorphone (NDC 00054439225, 00054439425), Ipratropium Bromide (NDC 00054840211, 00054840213, 00054840221, 00054840411, 00054840413, 00054840421), Oramorph SR (NDC 00054479025, 00054480519, 00054480525, 00054480527, 00054479225, 00054479325), Roxanol (NDC 00054375144, 00054375150, 00054375158), Roxicodone (NDC 00054465825, 00054466525) and Sodium Polystyrene O/S (NDC 00054380563, 00054881611).</p>	<p>Kirkland &amp; Ellis LLP 200 E. Randolph Drive Chicago, IL 60601</p> <p>On information and belief, copies of these documents can also be found with the applicable federal and state departments and subdivisions, including, but not limited to:</p> <p>Military Health System The Pentagon Washington, D.C. 20301-1200</p> <p>Veterans Health Administration 810 Vermont Ave. NW Washington, DC 20420</p>
<p>4. Communications between Ven-A-Care and CMS, agents of CMS, and/or other federal or state agencies, offices, departments, and/or legislators, if any, regarding the pricing, pricing benchmarks, and/or reimbursement for pharmaceutical products.</p>	<p>On information and belief, these documents are in the custody and control of Ven-A-Care and the Government.</p>



Document Category	Location(s)
<p>5. Publicly-available reports that did alert or should have alerted the federal and state governments that figures reported to it by First Data Bank and other third party pricing compendia did not reflect the acquisition costs of drugs for health care providers. <i>See, e.g.</i>, Medicare Action Transmittal No. 84-12, reprinted in Medicare and Medicaid Guide (CCH) § 34,157 at 2 (1984); various Office of the Inspector General reports from 1984 onward addressing Medicare and Medicaid payments for prescription drugs; Bill Alpert, <i>Hooked on Drugs</i>, Barron's, Vol. LXXVI, June 10, 1996, at 15; Spencer Rich, <i>Battling the High Prices Medicare Pays for Drugs</i>, The Washington Post, Jan. 2, 1997.</p>	<p>These documents are public documents that are readily available to the Government and the Relator. The majority of the reports were issued by the Office of the Inspector General or the General Accounting Office and therefore are in the custody and control of the Government.</p>
<p>6. Roxane's Rebate Agreements entered into with the Federal Government and/or state governments.</p>	<p>On information and belief, these documents are in the custody and control of the Government and can be found at the following locations:</p> <p>Office of the Secretary U.S. Department of Health &amp; Human Services 200 Independence Ave. S.W. Washington, D.C. 20201</p> <p>Centers for Medicare &amp; Medicaid Services 7111 Security Boulevard Baltimore, MD 21244</p>
<p>7. For the relevant time period, Roxane's quarterly AMP filings to CMS for its products at issue in this case.</p>	<p>On information and belief, these data are in the custody and control of the Government and can be found at the following location:</p> <p>Centers for Medicare &amp; Medicaid Services 7111 Security Boulevard Baltimore, MD 21244</p>
<p>8. All documents referenced in the Memorandum filed in support of Defendants' Joint Motion to Dismiss in this case, incorporated herein by reference.</p>	<p>Kirkland &amp; Ellis LLP 200 E. Randolph Drive Chicago, IL 60601</p>

<b>Document Category</b>	<b>Location(s)</b>
9. The Settlement Agreement reached between Roxane and the State of Texas in the Texas AWP Litigation.	<p>Kirkland &amp; Ellis LLP 200 E. Randolph Drive Chicago, IL 60601</p> <p>On information and belief, copies of these documents can also be found at the following location:</p> <p>Ven-A-Care of the Florida Keys, Inc. c/o James J. Breen The Breen Law Firm, P.A. 5755 Northpoint Parkway Suite 39 Alpharetta, GA 30022</p>
10. Documents originating from the Texas AWP Litigation that demonstrate that the federal government knew of its possible claims against Roxane for most target drugs long before the Government now claims to have acquired such knowledge, including, but not limited to documents revealing that Government attorneys attended depositions of Roxane employees.	<p>Kirkland &amp; Ellis LLP 200 E. Randolph Drive Chicago, IL 60601</p> <p>On information and belief, copies of these documents can also be found at the following location:</p> <p>Ven-A-Care of the Florida Keys, Inc. c/o James J. Breen The Breen Law Firm, P.A. 5755 Northpoint Parkway Suite 39 Alpharetta, GA 30022</p>

Roxane specifically excludes from these Initial Disclosures, any documents protected from disclosure by the attorney-client privilege or the work-product doctrine, including, but not limited to, the following types of documents:

1. Documents seeking or reflecting legal advice given to Roxane by Roxane's counsel. These communications have not been voluntarily disclosed to any persons other than employees of Roxane, counsel representing Roxane, or their agents.
2. Documents reflecting the mental impressions of attorneys representing Roxane, or containing or reflecting work undertaken at the direction of attorneys representing Roxane. These communications have not been voluntarily disclosed

to any persons other than employees of Roxane, counsel representing Roxane, or their agents.

3. Documents seeking or reflecting work product by Roxane's counsel, in connection with pending or anticipated litigation involving allegations similar to those in this case. These communications have not been voluntarily disclosed to any persons other than employees of Roxane, counsel representing Roxane, or their agents.

Roxane's identification of specific documents or categories of documents in this Response shall not be construed as an admission by Roxane of the existence or authenticity of such documents or categories of documents, and Roxane specifically reserves any objections that it may have as to the discoverability of such documents or categories of documents. This Response is not a waiver of any objections that Roxane may have.

- (C) **A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.**

**RESPONSE:**

Roxane is not asserting a claim for damages at this time. The Government has the burden of proving damages. Roxane disputes liability and, to the extent it is necessary and appropriate, will also contest the Government's damages claim. Without limitation, Roxane denies that the Government has suffered any injury whatsoever.

- (D) For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

**RESPONSE:**

Roxane is not currently aware of any insurance agreement under which an insurance carrier will be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Dated: January 12, 2009

Respectfully submitted,

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*On behalf of Defendants Boehringer Ingelheim  
Roxane, Inc. and Roxane Laboratories, Inc.*

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending on January 12, 2009, a copy to LexisNexis File and Serve for posting and notification to all parties.

/s/ Eric T. Gortner

Eric T. Gortner